

**OPP**

SUSAN WILLIAMS SCANN, ESQ.

Nevada Bar No. 000776

**DEANER, DEANER, SCANN, MALAN & LARSEN**

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Attorneys for Copper Sage Commerce Center, LLC

E-Filed on:

4/19/07

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE  
COMPANY,

Debtor

In re:  
USA CAPITAL REALTY ADVISORS, LLC.

Debtor

In re:  
USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC.

Debtor

In re:  
USA CAPITAL FIRST TRUST  
DEED FUND, LLC.

Debtor

In re:  
USA SECURITIES, LLC.

Debtor

Case No. BK-S-06-10725 LBR

Case No. BK-S-06-10726 LBR

Case No. BK-S-06-10727 LBR

Case No. BK-S-06-10728 LBR

Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under

Case No. BK-S-06-10725 LBR

**Date of Hearing: 4/26/07**

**Time of Hearing: 9:30 a.m.**

Affects:

☒ USA Commercial Mortgage Company

☒ USA Capital First Trust Deed Fund, LLC

☐ USA Realty Advisors, LLC

☐ USA Securities, LLC

☐ USA Capital Diversified Trust Deed Fund, LLC

☐ All Debtors

**OPPOSITION TO USA COMMERCIAL MORTGAGE COMPANY'S  
OBJECTION TO PROOF OF CLAIM NO. 792 FILED BY  
COPPER SAGE COMMERCIAL CENTER LLC**

COMES NOW, Creditor, COPPER SAGE COMMERCIAL CENTER, LLC, ("Copper Sage")

by and through its attorney, SUSAN WILLIAMS SCANN, ESQ. of the law firm of DEANER,

DEANER, SCANN, MALAN & LARSEN, and hereby opposes USA Commercial Mortgage Company's

Objection to Proof of Claim No. 792 Filed By Copper Sage.

1 The grounds for the Opposition are based on the following grounds:

2 **1. USACM contends that the loan documentation is incomplete.**

3 Attached hereto is complete copy of the Loan Agreement.

4 **2. The Loan Agreement does not clearly and unambiguously provide that Direct**  
5 **Lenders have an option but no obligation to further fund the loan.**

6 In early 2006, USACM agreed to provide loan funds to Copper Sage for Copper Sage to finance  
7 the acquisition and development of the Project. During the negotiations for the Loan, Copper Sage and  
8 USACM discussed and negotiated a loan sufficient for Copper Sage to not only acquire the Property,  
9 but to undertake the construction and development thereof. At all times during the negotiations,  
10 USACM knew and understood Copper Sage's borrowing needs and, accordingly, committed to fund the  
11 total Loan amount of Eleven Million Three Hundred Thousand Dollars (\$11,300,000.00). USACM  
12 knew and understood that the failure to fund all of the requested Loan would significantly damage  
13 Copper Sage, prohibit their development and construction of the Project, and destroy the purpose of the  
14 Loan. At all times during the Loan negotiations, USACM promised and assured Copper Sage that the  
15 entire amount needed to acquire and develop the Project would be provided. Based upon USACM's  
16 commitment and promises to provide the total sum of \$11,300,000.00, Copper Sage entered into the  
17 Construction Loan Agreement. USACM received an origination fee of three percentage points on the  
18 total Loan amount (or about \$330,000.00 in origination fees on a Loan of \$11,300,000.00). Exhibit "C"  
19 to the Loan Agreement shows the Disbursement Schedule for the completing the project.

20 **3. Copper Sage's damages are not too speculative to be allowed at this stage of the**  
21 **proceedings.**

22 Copper Sage has filed suit against the Direct Lenders in order to enforce the Loan Agreement.  
23 This matter has been filed in the Eighth Judicial District Court.

24 The Proof of Claim states \$3,500,000.00. This is the loss of profits based upon the budget for  
25 the project. Copper Sage is also entitled to \$660,000.00 development fees and overhead. Copper Sage  
26 is seeking to mitigate its damages in this matter presently.

1 Because the project is not complete, the damages would have to be estimated at this time. This  
2 Court allowed the claim of Copper Sage for voting purposes only. No objection was filed to this claim  
3 when voting took place. Copper Sage was allowed to vote in favor of the Plan.

4 **CONCLUSION**

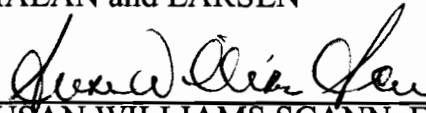
5 Based on the fact that the claim can be estimated pursuant to 502(c) and that USACM breached  
6 the Agreement, Binford requests that the objection to its Proof of Claim be denied and that the Claim  
7 be estimated and allowed for purposes of distribution.

8 DATED this 19<sup>th</sup> day of April, 2007

9 Respectfully Submitted,

10 DEANER, DEANER, SCANN,  
11 MALAN and LARSEN

12 By:



13 SUSAN WILLIAMS SCANN, ESQ.

14 Nevada Bar No. 000776

15 720 South Fourth Street, Suite 300

16 Las Vegas, Nevada 89101

17 Attorneys for Copper Sage Commerce Center LLC

18 **CERTIFICATE OF MAILING**

19 I hereby certify that service of the OPPOSITION TO USA COMMERCIAL MORTGAGE  
20 COMPANY'S OBJECTION TO PROOF OF CLAIM NO. 792 FILED BY COPPER SAGE  
21 COMMERCIAL CENTER LLC was made this 19th day of April, 2007, by depositing a copy of the  
22 same in the United States mail in Las Vegas, Nevada, postage-prepaid, addressed to the following:

23 USA Commercial Mortgage  
24 4484 S. Pecos Rd.  
25 Las Vegas, NV 89121

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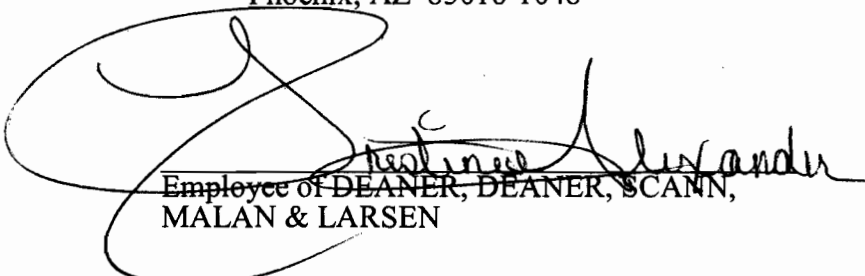
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